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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/718,426 | 11/24/2000 | Christophe Lacroix | 033808.136 | 1584 |

7590 02/04/2003

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EXAMINER

SHORT, PATRICIA A

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 1712 | 13 |

DATE MAILED: 02/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

| | | | |
|------------------------------|-------------------------------|--|--|
| Application No. 09/218426 | Applicant(s) Lacroix et al | | |
| Examiner Shurt | Group Art Unit 1712 | | |

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- Responsive to communication(s) filed on August 9, 2002
- This action is **FINAL**.
- Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- Claim(s) 1-13 is/are pending in the application.
- Of the above claim(s) 5, 7, 9, 10 is/are withdrawn from consideration.
- Claim(s) _____ is/are allowed.
- Claim(s) 1-4, 6, 8, 11-13 is/are rejected.
- Claim(s) _____ is/are objected to.
- Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- The proposed drawing correction, filed on _____ is approved disapproved.
- The drawing(s) filed on _____ is/are objected to by the Examiner.
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- All Some* None of the CERTIFIED copies of the priority documents have been received.
- received in Application No. (Series Code/Serial Number) _____
- received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received: _____

Attachment(s)

- Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- Notice of Reference(s) Cited, PTO-892
- Notice of Draftsperson's Patent Drawing Review, PTO-948
- Interview Summary, PTO-413
- Notice of Informal Patent Application, PTO-152
- Other _____

Office Action Summary

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP '680. The reference was discussed in the previous office action. While the preferred weight ratio of the ethylene copolymer to core shell polymer in the reference is 10:1 to 1.5/1, the reference teaches that the weight ratio can vary within wide limits. See page 1, line 38. Thus, it would have been obvious to use weight ratios of ethylene copolymer to core shell polymer outside the preferred range or weight ratios of less than 1.5/1.

Claims 1-4, 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP '985. The reference was discussed in the previous office action. While the preferred weight ratio of the ethylene copolymer to core shell polymer in the reference is 10:1 to 1.5/1, the reference teaches that the weight ratio can vary within wide limits. See page 1, line 37. Thus, it would have been obvious to use weight ratios of ethylene copolymer to core shell polymer outside the preferred range or weight ratios of less than 1.5/1.

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Claims 11-13 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over EP '088. The reference teaches impact modified compositions comprising thermoplastic polyester, core shell impact modifier and an ethylene-unsaturated epoxide copolymer. See examples. The instant claims do not limit the ratio of (B)/(A) in compositions in which the impact modifier is present in amounts of greater than 40 % with respect to the polyester. The impact modifier KM653 is a polybutadiene/styrene/methyl methacrylate core shell impact modifier encompassed by the claims or it would have been obvious to use a core shell impact modifier encompassed by the claims. See page 3, lines 35-41. As polycarbonate can function as an impact modifier and the impact modifier comprises (A) and (B), it is not clear that claim 12 would exclude the polycarbonate of the reference. Further, as the composition comprises (i) and (ii), it is not clear that claim 13 would exclude the polycarbonate of the reference.

Claims 1-4, 6 and 11-13 rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Dunkle. The reference teaches impact modified compositions comprising thermoplastic polyester, core shell impact modifier and ethylene unsaturated carboxylic acid anhydride copolymer. See examples and claim 1. With the exception of claim 8, the claims do not require a specific amount of impact modifier and do not limit the ratio of (B) to (A) in compositions in which the impact modifier is outside the range of 2 to 40%.

This application contains claims 7 and 9 drawn to an invention nonelected with traverse in Paper No. 9. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

P. Short

January 14, 2003

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PRIMARY EXAMINER

